

PT 02-7

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**CHRISTIANS BUILDING
URBAN COMMUNITIES,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0039
(98-16-1026)
P.I.N: 16-13-322-016**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. David Parkhurst, Mr. John Mraibie and Ms. Maria Woltjen of the DePaul Law School Legal Clinic on behalf of Christians Building Urban Communities (hereinafter the “applicant”).

SYNOPSIS: This proceeding raises the following issues: (1) whether real estate identified by Cook County Parcel Index Number 16-13-322-016 (hereinafter referred to as the “subject property”) was “used exclusively for religious purposes,” as required by 35 ILCS 200/15-40, during the 1998 assessment year; (2) whether applicant qualifies as an “institution of public charity” within the meaning of 35 ILCS 200/15-65(a); and, (3) whether the subject property was “actually and exclusively used for charitable or beneficent purposes,” as required by 35 ILCS 200/15-65, during the 1998 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on June 24, 1999. The Board reviewed this

complaint and recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that the requested exemption be granted. The Department reviewed the Board’s recommendation and issued a determination rejecting same on March 23, 2000. Said determination denied the requested exemption on grounds that the subject property was not in exempt ownership and not in exempt use. (Dept. Group Ex. No. 3).

Applicant filed a timely appeal to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that the Department’s initial determination in this matter be reversed.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 2 and 3.
2. The Department’s position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 3.
3. The subject property is located at 2920 W. Fillmore, Chicago, IL and consists of a 3,125 sq. foot unimproved lot. *Id.*
4. Applicant is an Illinois not-for-profit corporation organized for purposes of helping needy families by promoting and teaching Christian activities. Applicant Ex. Nos. 2, 3.
5. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service on March 8, 1996. This exemption remained in full force and effect throughout the 1998 tax year. Applicant Ex. No. 4.

6. Applicant obtained ownership of the subject property by means of a quitclaim deed dated October 15, 1997. Applicant Ex. No. 10.
7. The subject property was vacant and full of debris on the date of purchase. Applicant began removing this debris and cultivating the soil in order to plant a vegetable garden immediately upon obtaining its ownership interest. Applicant Ex. Nos. 7, 8 and 9; Tr. pp. 50-52.
8. Applicant continued with the debris removal and cultivation processes throughout the ensuing months and made its initial planting of vegetables in June of 1998. Tr. p. 58.
9. Applicant planted broccoli, carrots, greens and other vegetables in the garden. It distributed this produce free of charge to needy families in its area when the vegetables were grown. Tr. pp. 53-54.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1998 real estate taxes under Sections 15-40 and/or 15-65 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* Accordingly, the Department's initial determination herein should be reversed in accordance with the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, (hereinafter the “Code”). The Code provisions that govern disposition of this case are found in Sections 15-40 and 65(a) thereof, which provide, in pertinent part, for the exemption of:

200/15-40. Religious purposes, orphanages, or school and religious purposes.

§ 15-40. Religious purposes, orphanages, or school and religious purposes. All property used exclusively for religious purposes ... and not leased or otherwise used with a view to profit ...[.]

35 ILCS 200/15-40.

200/15-65. Charitable purposes

§ 15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 ILCS 200/15-65, 65(a).

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions or doubts resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Here the relevant statutory exemptions pertain to: (1) properties “used exclusively for religious purposes ...” (35 ILCS 200/15-40); and, (2) properties owned by

"institutions of public charity" that are actually and exclusively used for charitable or beneficent purposes. (35 ILCS 200/15-65, 65(a)). The word "exclusively" when used in Sections 15-40 and 15-65 means the "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

As applied to the uses of property, a religious purpose means "a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). "Charitable or beneficent purposes" are those which, by definition, benefit an indefinite number of people and persuade them to an educational or religious conviction that benefits their general welfare or somehow reduces the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893).

Technical distinctions between the charitable exemption, which requires both exempt ownership and exempt use (Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968)), and the religious exemption, which, in the present context,¹ requires only exempt use (People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, *supra*), can become blurred if dispensing charity forms an integral part of a religious organization's mission. First Presbyterian Church of Dixon v. Zehnder, 306 Ill. App. 3d 1114, 1117 (2nd Dist. 1999). This applicant's constitution and by-laws (Applicant Ex. No. 3) specifically state that its

1. The segment of Section 15-40 which governs the exemption of parsonages does require that the property be in exempt ownership. See, 35 ILCS 200/15-40. However, because the subject property was not used as a parsonage, that portion of Section 15-40 is inapplicable herein.

central organizational purposes are to help needy families by promoting and teaching Christian activities. Thus, any uses of the subject property that facilitate such goals, including, growing vegetables that applicant distributes to the needy free of charge, qualify as exempt uses under hybrid analysis set forth in First Presbyterian Church of Dixon, supra.

This is especially true where, as here, the subject property need not be in exempt ownership because one of the applicable statutes, Section 15-40, confers an exemption that is based on use alone. Here, that use involved preparing and cultivating a previously unused parcel of land. Such adaptation and development can constitute exempt use, but only if the end result thereof causes the property to be used for one or more specifically identifiable “religious” and/or “charitable” purposes. People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout relevant tax year, held exempt); Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt).

Evaluating applicant’s developmental efforts requires an appraisal of its ultimate intended use. Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 834 (3rd Dist., 2000). (Unimproved property that was being cultivated for use as a church yard held exempt). As noted above, that final objective was to cultivate the subject property for use as a vegetable garden which would yield free produce for the needy.

The relative simplicity of this goal did not require applicant to employ the sophisticated types of construction practices associated with more complex projects, like the seminary improvements at issue in the Catholic Bishop case or the medical facility under consideration in Weslin Properties. It did nevertheless obligate applicant to undertake a level of actual use which, under all the attendant circumstances, manifested a realistic capacity to bring this goal into fruition. Lutheran Church of the Good Shepherd of Bourbonnais, *supra*.

Removing debris that interfered with applicant's capacity to cultivate the subject property was but the first in a series of steps which ultimately enabled applicant to plant, and later harvest, produce from the vegetable garden it developed thereon. These uses, coupled with the distributional activities applicant undertook in connection therewith, are, pursuant to the holdings in First Presbyterian Church of Dixon v. Zehnder, First Presbyterian Church of Dixon v. Zehnder, *supra*, and Lutheran Church of the Good Shepherd of Bourbonnais, *supra*, sufficient to warrant exempting the subject property from 1998 real estate taxes under Sections 15-40 and/or 15-65 of the Property Tax Code. Therefore, the Department's initial determination in this matter, denying said exemption, should be reversed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 16-13-322-016 be exempt from 1998 real estate taxes under Sections 15-40 and/or 15-65 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

December 12, 2001
Date

Alan I. Marcus
Administrative Law Judge